

the VPP's responsibility to contact the OVS operator and request information needed to assess its interest in carriage on the system.

B. The Certification Process Should Be Simple And Straightforward

Similarly, the certification process should not become an entry barrier, as the Section 214 process was for video dialtone. The Conference Report explicitly recognized that “[the Section 214 requirement] has served as an obstacle to competitive entry and has disproportionately disadvantaged new competitors. Eliminating this barrier to entry will hasten the development of video competition and will provide consumers with increased program choice.”³⁷ By requiring the Commission to approve or disapprove an application within 10 days, Congress clearly signaled its intention that the certification process be simple and straightforward. As noted in the Conference Report, the Commission is simply charged with certifying the carrier’s “intent to comply” with Section 653(b).³⁸ No elaborate showing should be required.

Furthermore, there is no need for the Commission to decide the “proper point in time for certification,” as suggested in paragraph 68 of the Notice. The OVS operator will determine the proper point in time for certification based on its business plans and deployment schedule.

³⁷ Conference Report at 173.

³⁸ Id. at 177.

U S WEST strongly opposes establishing a review process that would make a determination only that the application is “facially proper, subject to a more thorough review if a dispute subsequently arises regarding compliance with the open video system provisions.”³⁹ Once a certification is approved, the operator should be entitled to rely on that approval and not be subjected to constant threat of disapproval (and de-certification) whenever a dispute arises. In the event that the Commission finds that an OVS operator has violated a Commission rule, it can take whatever remedial action is appropriate through the complaint process, including requiring carriage and awarding damages. Only under the most egregious circumstances should the Commission have the power to revoke a certification.

VII. CONCLUSION

The Commission must refrain from imposing regulatory requirements that go beyond what is needed to implement Section 653. As Congress recognized, flexibility is key. Without substantial flexibility, LECs like USWC will not find OVS to be an attractive model for market entry in the near-term. U S WEST hopes that the Commission does only what is demonstrably necessary to carry out its

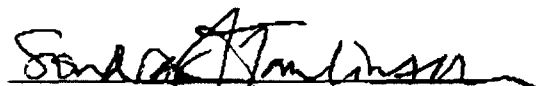
³⁹ Notice ¶ 68.

mandate, and avoids the pitfalls of video dialtone regulation so that the same mistakes will not be repeated in OVS.

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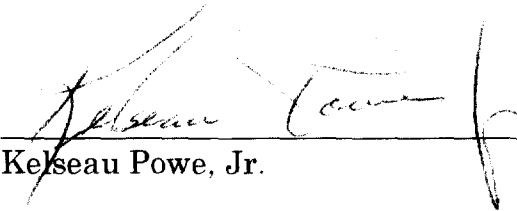
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Of Counsel,
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April 1, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 1st day of April, 1996, I have caused a copy of the foregoing **U S WEST, INC. COMMENTS ON OPEN VIDEO SYSTEMS** to be served via hand-delivery, upon the persons listed on the attached service list.



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